

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 25TH SEPTEMBER 2007 / 3RD ASWINA 1929

Bail Appl..No. 5797 of 2007()

[CRIME NO.231/2007 OF KADAKKAVOOR POLICE STATION]

: PETITIONERS/ACCUSED 1 & 2

1. BIJU, S/O. LATE AMEEN, AGED 27 YEARS,
METHARU VILAKOM, VAKKOM VILLAGE,
THIRUVANANTHAPURAM DISTRICT.
2. ANWAR, S/O. ABDUL RAB, AGED 24 YEARS,
VAKKOM VILLAGE, THIRUVANANTHAPURAM DISTRICT.

BY ADV. SRI.P.K.MUHAMMED

RESPONDENTS: COMPLAINANT & STATE

1. SUB INSPECTOR OF POLICE,
KADAKKAVOOR POLICE STATION,
THIRUVANANTHAPURAM DISTRICT.
2. STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION
ON 25/09/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

R.BASANT, J.

B.A.No.5797 of 2007

Dated this the 25th day of September 2007

O R D E R

Application for anticipatory bail. The petitioners are accused 1 and 2. They face allegations in a crime registered under Section 394 read with 34 I.P.C. Altogether there are three accused persons. Third accused has already been arrested and was enlarged on bail. Investigation is in progress. The petitioners apprehend imminent arrest.

2. The crux of the allegations against the accused persons is that they entertained an animus against the de facto complainant who is employed abroad and had come on leave. The animus was entertained on account of the fact that the de facto complainant had not furnished to them liquor as promised by him earlier, after returning from Gulf. On this score, there was exchange of words and it is alleged that the accused, who have criminal antecedents, snatched away a mobile phone, A.T.M card and an amount of Rs.9,000/- from the possession of the de facto complainant. The F.I statement was lodged before the police. Crime has been registered. Investigation is in progress.

3. The learned counsel for the petitioner submits that the petitioners and the de facto complainant were on friendly terms and that the alleged incident, even if the entire allegations were accepted, occurred only because of a dispute between them regarding supply of liquor to the petitioners. At any rate, the petitioners do not deserve to endure the trauma of arrest and detention. They may be granted anticipatory bail, it is prayed.

4. The learned Public Prosecutor opposes the application. The learned Public Prosecutor submits that there are no features in this case which would justify the invocation of the extraordinary equitable discretion under Section 438 Cr.P.C. The learned Public Prosecutor submits that the stolen articles have not been recovered yet. Third accused has already been arrested and interrogated. But the recovery of the articles could not be effected as it is only the petitioners who can furnish clue about the place where the stolen articles are concealed. In these circumstances, in the interests of a proper, efficient and expeditious investigation, the petitioners may not be granted anticipatory bail, it is prayed.

5. I have considered all the relevant inputs. I find merit in the opposition by the learned Public Prosecutor. Notwithstanding the fact that the indications suggest that the petitioners and the de facto complainant were on friendly terms earlier, I am of the opinion that there are no features in this case which would justify the invocation of the extraordinary equitable discretion. The fact that the allegedly stolen articles have not been recovered so far is one more indication to suggest that the petitioners are not entitled to anticipatory bail at this stage.

6. In the result, this petition is dismissed. Needless to say, if the petitioners surrender before the investigating officer or the learned Magistrate and apply for bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits, in accordance with law and expeditiously.

Hand over copy of this order to the learned counsel for the petitioner.

(R.BASANT, JUDGE)

jsr // True Copy// PA to Judge

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007